#### SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

#### I. EXECUTIVE SUMMARY

Date of Incident:	January 12, 2010				
Time of Incident:	4:15 am	4:15 am			
Location of Incident:	Chicago IL, 6063	Chicago IL, 60655			
Date of COPA Notificati	ion: October 25, 2017				
Time of COPA Notificat					
at Officer home af Jr. was sattempted suicide or pos dispatch, CPD Detectives, statements under oath re	at 4:15 a.m., off-duty Officer and the having been out drinking since 11:00 p.m. who with Officer duty weapon. The casibly an attempted murder. Officer plants, IPRA, and COPA. During ensuing civil litigate garding the events. Several of Officer defined and more credible statements by other	on January 11, 2010, when case was investigated as an made statements to 9-1-1 gation, Officer made material statements			
II. INVOLVED	PARTIES				
Involved Officer #1:	Star # Emp 2004, Police Officer, D Male, White	loyee ID # DOA:			
Subject #1	Jr., DOB:	Male, White			
III. ALLEGATIO	DNS				
Officer	Allegation	Finding			
Officer	Allegation 1	Sustained			
	It is alleged that <b>Officer</b> statements w				

under oath, regarding the amount of alcohol he drank between the night of January 11, 2010, and

<sup>&</sup>lt;sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

the morning of January 12, 2010. Specifically, on May 4, 2012, Officer gave a deposition under oath, at 33 N. LaSalle Street, Chicago, Illinois, in the civil case v. City of Chicago, 10 L 11901 (Circuit Court of Cook County, Illinois, Law Division) (later removed to U.S. District Court as v. City of Chicago, 14 CV 9665 (N.D. Ill.)) and gave the following answers in response to the following questions:

Q. Your testimony is that you had approximately two 12-ounce beers at true?

. . .

A. Two beers at the most at

Q. And approximately two beers at true?

A. True.

Q. In addition to that you had less than one bottle at your home before the incident occurred, true?

A. True.

Q. So in total, your testimony here today is that you consumed approximately four to five bottles of beer the entire evening from approximately, again, estimate, from 11:00 p.m. on January 11, 2010, through approximately 4:15 the morning of January 12th?

. . .

A. Yes.

Q. Do you want to add to the number of bottes that you drank or to the drinks that you had or deduct from that after I move on from here?

Sustained

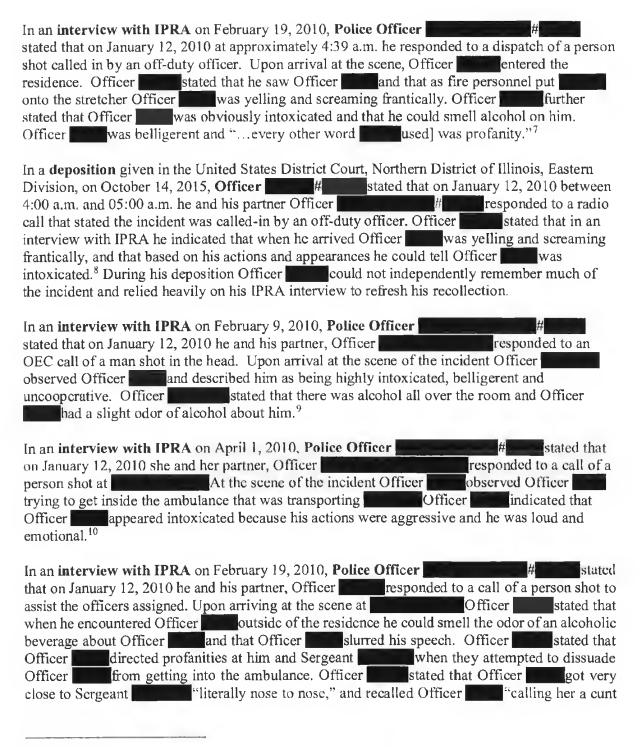
A. No.
Allegation 2
It is alleged that Officer knowingly made false statements while under oath about whether he was intoxicated on January 12, 2010, at 4:15 a.m. Specifically, when he gave the following answers in response to the following questions:
A. I disagree with when she <sup>2</sup> states I was highly intoxicated and that I was belligerent. (sic)
Q. And it's your opinion that you were not intoxicated at the time of the incident, correct?
A. I believe I wasn't.
•••
Q. So would I be correct that you are unaware of the personal feeling of what it is to be intoxicated, is that true?
A. True.
Q. You have never been intoxicated prior to January 11, 2010, correct?
•••
A. Correct.
Q. When you arrived at your house after leaving

<sup>&</sup>lt;sup>2</sup> "She" refers to Sergeant who arrested Officer that hight and indicated in her report that he was "highly intoxicated" when the police arrived on scene.

before the incident, in your opinion were you intoxicated? No. Q. So your opinion is that you were not intoxicated, correct? Correct. A. Allegation 3 Sustained It is alleged that on January 11, 2011, at 10 W. 35th Street, Officer made false statements to IPRA regarding his intoxication in the morning of January 12, 2010. Specifically, when Officer offered the following answer to the following questions: ... were you intoxicated at this point? No I don't think so. I'm not really sure if I was or not. Okay. Um, and were you Q. intoxicated while you were off duty? A. I, I don't think so, I'm not sure. Allegation 4 Not Sustained It is alleged that on January 12, 2010, at 727 E. 111th Street, Officer star destroyed evidence by urinating on his hands in lockup prior to the administration of a GSR swab.

CIVILIAN OFFICE OF POLICE ACCOUNTABILITY				LOG#1087256		
IV.	APPLICABLE	RULES AND LAWS				
Rules						
	and goals or brin	nduct which impedes the gs discredit upon the Dog a false report, written o	•	chieve its policy		
V.	INVESTIGAT	ION				
	a. Interviews					
that on Ja responded that when	nuary 12, 2010, a d to a dispatch cal a she arrived on so te and attempted to	l of a person shot near cne she approached Off	n., while on duty and in unity Sergea icer who was near the ontrol him. However, Sarga	nt stated back of the		
Division, approxim Troy. Upovery chaot that she as departmentighly int	on October 29, 20 ately 4:30 a.m., sloon arriving at the stic." and that "we sked Officer and personnel, but I oxicated based on	one responded to a dispatch to the responded to a dispatch scene Sergeant with Office several times to stop one would not stop. Serged the strong odor of alcoloring the strong odor odor odor odor odor odor odor odo	Court, Northern District of I stated that on January 12, 2 ch of a "person shot" at or n stated "we had to control the core structing the EMTs and/or ant described Offinol. She further qualified h I and other intoxicated-relations.	2010, at car 107 <sup>th</sup> and ne scene. It was further stated the fire cer as		

Attachment 26
 Att. 47; Pg. 56 Lines 3-6
 Att. 47; Pg. 56 Lines 15-18
 Attachment 47

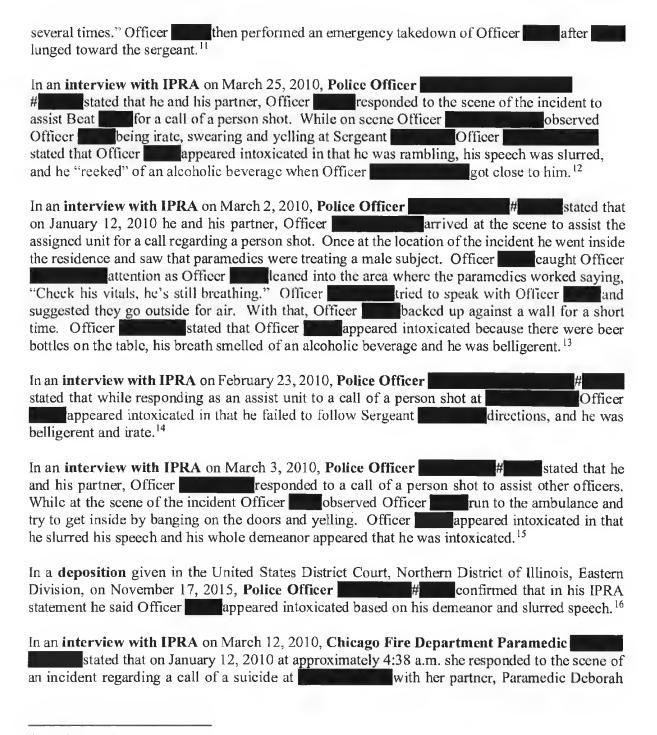


<sup>&</sup>lt;sup>7</sup> Attachment 49

<sup>&</sup>lt;sup>8</sup> Attachment 48

<sup>9</sup> Attachment 24

<sup>&</sup>lt;sup>10</sup> Attachment 22



<sup>&</sup>lt;sup>11</sup> Attachment 44

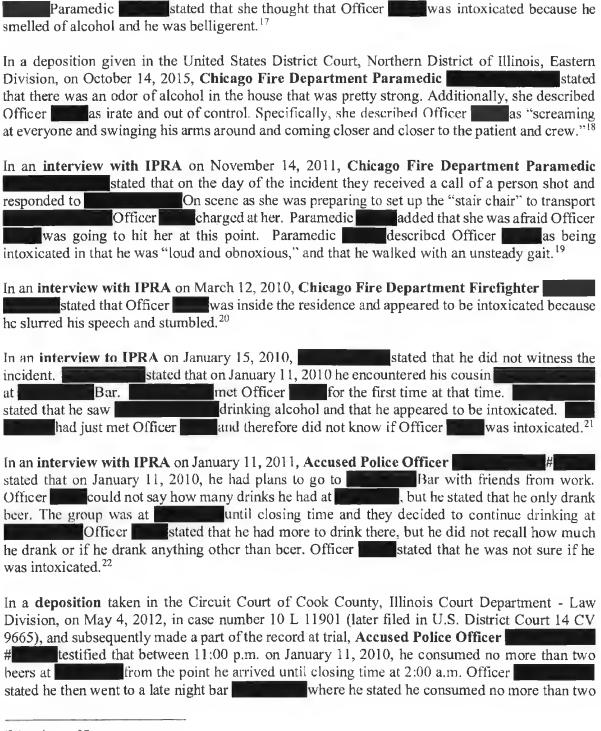
<sup>12</sup> Attachment 20

<sup>13</sup> Attachment 21

<sup>14</sup> Attachment 23

<sup>15</sup> Attachment 25

<sup>16</sup> Attachment 36



<sup>&</sup>lt;sup>17</sup> Attachment 27

<sup>&</sup>lt;sup>18</sup> Attachment 31

<sup>19</sup> Attachment 42

<sup>&</sup>lt;sup>20</sup> Attachment 29

<sup>&</sup>lt;sup>21</sup> Attachment 46

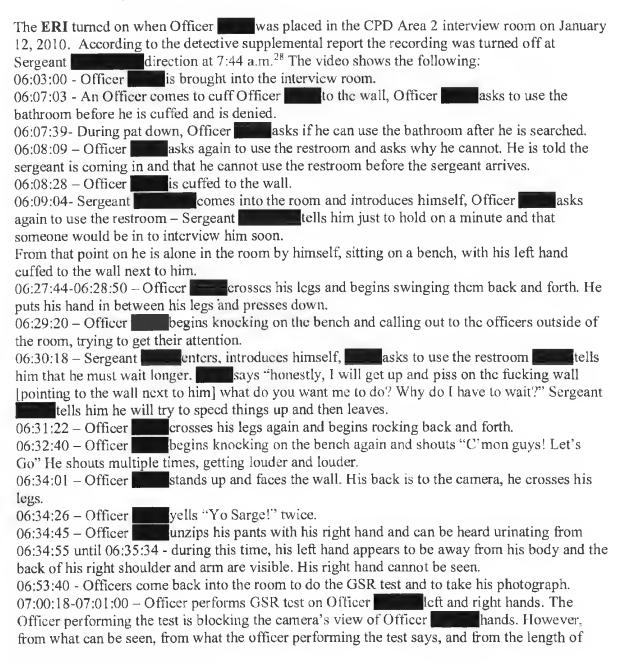
<sup>&</sup>lt;sup>22</sup> Attachment 35

beers before returning to his house. He further stated that he opened a beer after returning home from but consumed less than a full beer. Officer agreed that he consumed a total of approximately four to five 12-oounce beers from 11:00 p.m., January 11, 2010, through 4:15 a.m., January 12, 2010. Officer answered no when asked if he had ever been intoxicated prior to January 11, 2010, and that it was true he was unaware of the personal feeling of being intoxicated. Officer added that when he left and arrived at his house he was not intoxicated. Officer also gave the following testimony about intoxication:  Q. When you arrived at your house after leaving and before the incident, in your opinion, were you intoxicated?  A. No.
Q. So your opinion is that you were not intoxicated, correct? A. Correct.
Q. Are you familiar with what the legal level of intoxication is in the state of Illinois?  A. Yes.
Q. What is it? What's your understanding of what that .08 level does to somebody in terms of impairment?
A. That is when the signs of intoxication are apparent.
Officer agreed that .09 <sup>23</sup> was above the legal limit for intoxication in Illinois. He testified that he had not had anything to drink or taken mouthwash in the seven or eight hours between the shooting and the breathalyzer test.
Q: Would you agree that if the number is correct point 093, it would indicate that you were intoxicated approximately eight hours after the event, correct?
A: It could indicate that, yes. <sup>24</sup>
In an interview with COPA on January 23, 2018, Accused Police Officer was confronted with the relevant portions of his prior statements from his January 11, 2011 interview with IPRA and his May 4, 2012 deposition. Officer was asked if he stood by his prior statement or wanted to add to or amend of the statements. For all of the prior statements presented Officer declined to add or amend his statements and stated his answers were truthful. Additionally, Officer stated when he was placed in the interview room he requested multiple times to use the restroom. Eventually, Officer urinated in the interview room however he stated that he did not urinate on his hands or in an effort to destroy evidence. 25
In a <b>deposition</b> given in the United States District Court, Northern District of Illinois, Eastern Division, taken November 23, 2015, <b>Sergeant</b> stated that in January of 2010 he was a violent crimes supervisor with the detectives' division. On January 11, 2010, Sergeant stated that after viewing the Electronically Recorded Interview (ERI) he

On January 12, 2010 a breathalyzer test of Officer showed a BAC of .093. See attachment 33
 Attachment 34
 Attachments 51-53

observed Officer							
administered. However.						on his ha	nds or
took any steps to contar	ninate or remov	e debris or ev	vidence fr	rom his har	nds. <sup>27</sup>		

#### a. Digital Evidence



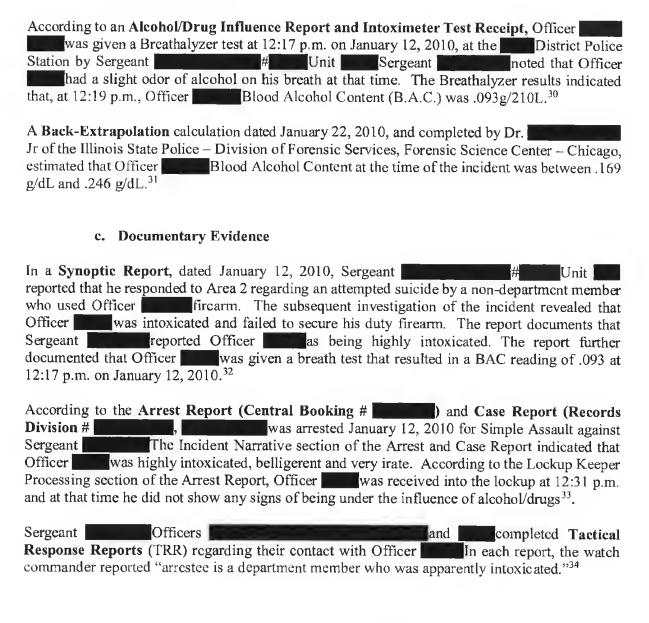
<sup>&</sup>lt;sup>26</sup> Area 2 is now known as Area South

<sup>&</sup>lt;sup>27</sup> Attachment 32

<sup>&</sup>lt;sup>28</sup> Attachment 55

time administering the test – it appears that the Officer is only testing Officer hands and not his wrists or forearms.<sup>29</sup>

### b. Physical Evidence



<sup>&</sup>lt;sup>29</sup> Attachment 9

<sup>&</sup>lt;sup>30</sup> Attachments 30, 33

<sup>31</sup> Attachment 28

<sup>32</sup> Attachment 50

<sup>33</sup> Attachments 43, 45

<sup>&</sup>lt;sup>34</sup> Attachments 37-41

#### VI. ANALYSIS

COPA recommends a finding of **Sustained** for **Allegation 1** against **Accused Police Officer** that he provided a false statement during a sworn deposition in that he only had four to five 12 ounce beers between 11:00 p.m. on January 11, 2010, and 4:15 a.m. on January 12, 2010.

Chicago Police Rule 14 prohibits the falsification of any report, written or oral. The relevant section of the Collective Bargaining Agreement (herein CBA) 6.1 M. states that a Rule 14 violation will be charged when, "the Officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation."

In sum, Officer gave a sworn statement under oath in which he claimed he was not intoxicated after leaving bar, arriving at his house just prior to when was shot. These statements are contradicted by several eye witnesses and contradicted by Officer BAC of 0.093g/210L taken at 12:17 p.m. on January 12, 2010. For reasons stated below, the evidence supports the accuracy of the back extrapolation performed by the ISP toxicologist. However, back extrapolation notwithstanding, it is clear, and Officer agreed at deposition, that a BAC of .093 "could" indicate he was intoxicated at 12:17 p.m. the next day.

ISP's back extrapolation estimated BAC at the time of the incident was between .169 g/dL and .246 g/dL. Back extrapolation is most reliable when an individual is in the elimination phase – after the body stops absorbing alcohol – which can be between 15 and 90 minutes after an individual's last drink. Here, Officer last drink was sometime before 4:15 a.m., and the breathalyzer was not administered until nearly eight hours later. During the intervening eight hours, Officer was in police custody, thus we know he did not have any additional alcohol. Accordingly, it is more probable than not that Officer was between two times and three times the legal limit of intoxication at the time of the shooting and the police and EMT response to his house. His statements under oath and to IPRA that he was not intoxicated were false.

Moreover, Officer stated that he had a total of four to five 12 oz. beers<sup>36</sup> from 11:00 p.m. on January 11, 2010, through 4:15 a.m. on January 12, 2010. In direct contrast, the fact that Officer had a BAC of 0.093 at 12 p.m., eight hours after the shooting, would be impossible had he only drank five beers during a five-hour period and stopped consuming alcohol eight hours prior to providing a sample for the breathalyzer. Even using the conservative estimate of the range for the back extrapolation of .169 g/Dl, five beers over that five-hour period is simply not consistent. According to the National Highway Traffic Safety Administration (NHTSA)<sup>37</sup>, one 4.5% alcohol by volume (ABV) beer only raises a 200-pound person's BAC by 0.02, while the average person's BAC decreases 0.015 percentage each hour after drinking. Officer stestified he was out drinking for five hours and only drank five light beers – two between 11:00 p.m. and 2:00 a.m., two between 2:00 a.m. and 4:00 a.m., and less than one between 4:00 a.m. and 4:15 a.m. If this were true, his BAC would have been around 0.025 around 4:15 a.m., and would have been zero by 6:30 a.m. Assuming, arguendo, Officer only drank five beers, and drank all five of those

<sup>35</sup> People v. Floyd, 2014 IL App 2d 120507.

<sup>&</sup>lt;sup>36</sup> moted that he drank Miller Lite or Bud Light. Three bottles of "Bud light" and 2 bottles of "Full Moon" were recovered from home

<sup>&</sup>lt;sup>37</sup> "Approximate Blood Alcohol Content (BAC) In One Hour" table by NHTSA, attached hereto as Exhibit 1.

beers right before the shooting, his peak BAC would have been 0.10 at 4:15 a.m., and by 12:00 p.m. his BAC would have been a 0.0. Instead, Officer BAC was still 0.093 at approximately 12:15 p.m. It is impossible that Officer only alcohol intake between 11:00 p.m. and 4:15 a.m. was four beers.
For the same reasons stated in support of the findings for Allegation 1, COPA recommends a finding of Sustained for Allegation 2 against Accused Police Officer that he provided a false statement under oath that he was not intoxicated while off duty the night of January 11, 2010, and the morning of January 12, 2010.
For the same reasons stated in support of the findings for Allegation 1 and 2, COPA recommends a finding of <b>Sustained</b> for <b>Allegation 3</b> against <b>Accused Police Officer</b> ####################################
that Officer destroyed evidence by urinating on his hands in lockup prior to the administration of a GSR swab. No one witnessed or testified that they witnessed Officer urinating on his hands. From review of the ERI, there is insufficient evidence to conclude that Officer was deliberately attempting to urinate on his hands. Officer asked to use the washroom multiple times and was in the interview room alone for 20 minutes prior to urinating against the wall. It is logical that if Officer was trying to destroy evidence, he would have acted as soon as he had the opportunity to do so. Instead Officer asks everyone who comes into the room if he can use the washroom, and then yells out multiple times before standing up to urinate against the wall. While he is urinating, Officer left hand is visible the entire time. While Officer right hand is not visible, there is insufficient evidence to conclude that he intentionally urinated on his hand to destroy evidence.
VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS
a. Officer
i. COPA has reviewed Officer Complimentary and Disciplinary History.
ii. Recommended Penalty, by Allegation
1. Allegation No. 1
Based on the egregious nature of the allegation, COPA recommends that Officer be separated from the Chicago Police Department.
2. Allegation No. 2
Based on the egregious nature of the allegation, COPA recommends that Officer be separated from the Chicago Police Department.

### 3. Allegation No. 3

Based on the egregious nature of the allegation, COPA recommends that Officer because be separated from the Chicago Police Department.

#### VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer	1. Provided false statements in violation of rule 14 (see above)	Sustained
	2. Provided false statements in violation of rule 14 (see above)	Sustained
	3. Provided false statements in violation of rule 14 (see above)	Sustained
	4. Attempted to destroy evidence by urinating on his hands prior to GSR test was performed.	Not Sustained

Approved:

Sydney R. Roberts Chief Administrator Date

9/20/18

## Appendix A

# Assigned Investigative Staff

Squad#

Investigator:

**Supervising Investigator:** 

Deputy Chief Administrator:



## Approximate Blood Alcohol Content (BAC) In One Hour

Source: National Highway Traffic Safety Administration **Drinks Body Weight In Pounds** Influenced 100 180 200 220 240 120 140 160 .02 .05 .03 .03 .03 .02 .02 1 .04 Possibly .07 2 .04 .06 .05 .05 .04 .06 .06 3 .07 **Impaired** 4 IR 5 20 1.1 6 1 : 8 9 253 10

Subtract .015 for each hour after drinking.

One drink equals 1.5 oz. of 80 proof liquor (40%), 12 oz. beer (4.5%), or 5 oz. wine (12%). Note: The figures are averages and may vary based on the amount of food in your stomach.